

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

*In re Crop Protection Products Loyalty Program
Antitrust Litigation*

Case No. 1:23-md-3062-TDS-JEP

This document relates to: ALL ACTIONS

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
APPOINTMENT OF WARREN T. BURNS AS INTERIM CLASS COUNSEL
AND CHARLES GABRIEL AS LIAISON COUNSEL**

As directed by the Court's April 7, 2023 Order (Doc. 31), Plaintiffs H & R Farms II and Teche Farm Supplies (collectively, "the BC Plaintiffs") file this Memorandum in Support of their Motion for the Appointment of Warren T. Burns of Burns Charest LLP as Interim Class Counsel and Charles Gabriel of Chalmers & Adams PLLC¹ as Liaison Counsel.

I. Introduction and Summary of Argument

The BC Plaintiffs move for the appointment of Warren T. Burns to serve as Interim Class Counsel in this consolidated class action and for the appointment of Charles Gabriel as Liaison Counsel.

The simple fact is that this Court will receive several applications from very competent lawyers to serve in lead or co-lead positions. The undersigned has worked collaboratively with many of these lawyers for nearly two decades in leadership positions in antitrust class actions

¹ Chalmers & Adams PLLC has recently changed its name to Chalmers, Adams, Backer & Kaufman, LLC. As of the time of filing, this name change is pending in North Carolina. As this motion is filed in North Carolina, this motion will reflect the firm's current name in the state, Chalmers & Adams.

prosecuted throughout the country. If the Court is inclined to appoint a multi-firm leadership structure, Burns is more than happy to work with any of the counsel involved in this case.

However, experience in cases like this one teaches that often less is more when it comes down to managing a case to a successful conclusion. This is a complex case that will require significant antitrust and case management experience. It will also require coordination with the government and a deft hand in balancing public and private interests as the case moves forward. The BC Plaintiffs submit that the court should appoint no more than two attorneys to lead this case on behalf of private litigants. Interim class counsel should have the experience and resources to manage this case.

Warren Burns possesses the deep and broad experience needed to prosecute this case. He has substantial expertise and a record of success in complex antitrust class actions. Most recently, while serving as Co-Lead Counsel and Lead Trial Counsel, he was instrumental in securing a \$609 million settlement on behalf of indirect purchasers of EpiPens in *In re: EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, 17-md-2785-DDC-TJJ (D. Kan.). Highly relevant here, Burns has also served as lead counsel for private litigants in a case involving a concurrent government civil suit brought by the Commodity Futures Trading Commission, requiring careful coordination with his government counterparts in *In re Crude Oil Commodity Futures Litigation*, 11 CV 3600 (S.D.N.Y.).

Joining Burns is a deep bench of talent at Burns Charest, including partners Korey Nelson, Christopher Cormier, Amanda Klevorn, and Spencer Cox. Each of these talented lawyers brings significant experience representing those that have been harmed by antitrust violations. Further, Mr. Burns and his team bring the necessary trial and case management

experience to move this case forward efficiently. The streamlined leadership structure proposed herein, with Charles Gabriel of Chalmers & Adams PLLC as Liaison Counsel, is the most effective and efficient means to move this case forward and secure the best result for the class.

II. The court should appoint Burns Charest to lead this litigation.

A. Standards for the appointment of Interim Class Counsel under Rule 23(g)(3)

Selecting interim class counsel early in the litigation facilitates “efficiency and economy without jeopardizing fairness to the parties.” *Manual for Complex Litig.* § 10.221 (4th ed. 2004) (“*Manual*”) (interim counsel “assume a responsibility to the court and an obligation to act fairly, efficiently, and economically in the interests of all parties and parties’ counsel”). In cases like this, appointing seasoned class counsel is one of the district court’s key organizational tools. *Id.* §§ 10.224, 21.272. The “designation of interim [class] counsel clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement.” *Id.* § 21.11. Because class counsel has the ultimate responsibility to act on behalf of the class, the Court must appoint capable class counsel who can fairly and adequately represent the class’s interests, including through trial if necessary. *Id.* §§ 21.271–72.

Under Federal Rule of Civil Procedure 23(g)(3), this Court may “designate interim counsel to act on behalf of a putative class before determining whether to certify the actions as a class action.” Fed. R. Civ. P. 23(g)(3). Rule 23(g) sets forth four considerations for the appointment of interim class counsel: (i) the work counsel has done to identify or investigate potential claims; (ii) counsel’s experience in handling class actions, other complex litigation,

and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. Fed R. Civ. P. 23(g)(1)(A)(i)–(iv). No single factor is determinative; all factors must be weighed to determine who can best represent the class. Fed. R. Civ. P. 23 Advisory Committee Notes (2003 Amendments). The primary goal in appointing leadership in a complex action “is achieving efficiency and economy without jeopardizing fairness to the parties.” *Manual* at § 10.221 (4th ed. 2004).

B. Mr. Burns and his firm are fully prepared to serve the interests of the putative class.

1. Burns and Burns Charest have invested substantial resources investigating the factual bases for the claims.

This case is in its infancy. Whomever this Court appoints to lead it will need to hit the ground running. The work done to date is merely a precursor to what lies ahead.

Burns and Burns Charest have invested substantial resources investigating the factual bases for the claims at issue in this case. Beginning earlier this year, Burns Charest attorneys traveled throughout rural southern Louisiana to meet with farmers and discuss the pricing of crop protection products. These farmers grow, among other things, soybeans, sugar cane, and rice. Most of them expressed their alarm at what they say are the unsustainably increasing prices of crop protection products and questioned why cheaper alternatives were not available. They also described how these prices affect their decisions on how much in loans they need to take out each year for these products. While on the road, Burns Charest attorneys also attended meetings of agricultural cooperatives to learn how these prices affect their constituent members. In fact, one of the BC Plaintiffs, Teche Farm Supplies, represents more than 90

farmers affected by the pricing scheme of the defendants. In addition to that field investigation, Burns Charest attorneys reviewed and analyzed pricing invoices to determine who is affected by the defendants named in the governmental investigation and which products have been purchased.

Burns and Burns Charest have also dedicated significant resources to researching the legal bases of their clients' claims and to anticipating the likely defenses that will dictate next steps in this litigation.

2. The lawyers at Burns Charest LLP and Chalmers & Adams PLLC have substantial experience successfully leading complex class actions, knowledge of the applicable case law, and resources to commit to this action.

a. Burns Charest LLP

Burns and Burns Charest have developed a national reputation for excellence and success in complex antitrust cases. A trial lawyers' boutique with offices in Dallas, Texas, New Orleans, Louisiana, and Washington D.C., Burns Charest enjoys extensive experience in managing and litigating complex antitrust class actions like this case.

Courts have routinely appointed Burns Charest to leadership positions in antitrust class actions. This year, Burns Charest received the award for Outstanding Achievement in Antitrust Litigation for Private Law Practice from the American Antitrust Institute. The honor recognized the work of the team of Warren Burns, Spencer Cox, and Amanda Klevorn for prevailing in a complex RICO and antitrust action alleging a series of anti-competitive practices by the makers of the EpiPen auto-injector device (*In re: EpiPen (Epinephrine Injection, USP) Mktg., Sales Practs. & Antitrust Litig.*, 17-md-2785-DDC-TJJ (D. Kan.), ultimately reaching a \$609 million class-wide settlement.

Further, Burns Charest has the resources to commit to the prosecution of this action and is fully prepared to do so. Leading this case for Burns Charest on a day-to-day basis will be:

Warren T. Burns. Warren T. Burns is a founder and managing partner of Burns Charest LLP. Before co-founding the firm, Mr. Burns was a partner at Susman Godfrey LLP. While at his previous firm, Mr. Burns tried his first antitrust case (*In re: Universal Service Fund Telephone Billing Practices Litigation*, Case No. 02-MD-1468 (D. Kan.)) before Judge Lungstrum in the District of Kansas. Since that time, Mr. Burns has served as co-lead counsel in a number of antitrust and other class actions, including *In re: Automotive Parts Antitrust Litig.* (E.D. Mich.); *In re: Vehicle Carrier Servs. Antitrust Litig.* (D.N.J.); *In re: Anadarko Basin Oil & Gas Lease Antitrust Litig.* (W.D. Okla.); and *In re: WTI Crude Oil Commodities Litig.* (S.D.N.Y.); *In re: EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, 17-md-2785-DDC-TJJ (D. Kan.); *In re German Auto. Manufacturers Antitrust Litig.*, MDL No. 2796 CRB (JSC) (N.D. Cal.).

Every year since 2014, Mr. Burns has been named to the International Who's Who of Competition Lawyers. Since 2015, Mr. Burns has been included in the Top 100 National Trial Lawyers. Mr. Burns has been named to the Lawdragon 500 Leading Plaintiff Financial Lawyers guide and the Lawdragon 500 Leading Plaintiff Consumer Lawyers guide for the past three years. In 2016, Mr. Burns was elected to the American Law Institute—the leading independent organization in the United States producing scholarly work to clarify, modernize, and improve the law. More information about Mr. Burns's relevant experience is included in his resume, attached as Exhibit A.

Korey Nelson. Mr. Nelson has litigated antitrust cases, environmental pollution cases, Jones Act cases, pharmaceutical injury cases, consumer class actions, and mass tort cases around the United States. In *St. Rose v. Heavy Materials, LLC*, Mr. Nelson represents a putative class of consumers in an antitrust case suing concrete manufacturers in the territory for illegally agreeing to forego competition. He is also court-appointed class counsel in *Novoa v. Geo Group Inc.* representing civil detainees that must work for free in order to provide the basic necessities, which, of course, must be purchased from Geo. And in the *Asbestos, Catalyst, and Silica Dust Litig. series*, he was lead counsel for the prosecution of hundreds of consolidated plaintiffs occupationally exposed to asbestos while working inside one of the largest oil refineries in the Western Hemisphere. Best Lawyers in America has recognized Mr. Nelson in the area of Energy Law in 2021 and 2022. More information about Mr. Nelson's relevant experience is included in his resume, attached as Exhibit B.

Christopher Cormier. Mr. Cormier is an accomplished plaintiffs' lawyer who has substantial experience litigating complex antitrust cases. Over his career, he has obtained more than \$1.5 billion in verdicts and settlements for clients in federal and state courts across the country. He served as co-lead counsel in *In re Urethane Antitrust Litig.*, No. 04-md-01616 (D. Kan.), a case that spanned more than a decade that produced over \$120 million in pre-trial settlements and, after a four-week jury trial, resulted in a verdict that was automatically trebled to more than \$1 billion. According to the *National Law Journal*, this was the largest jury verdict in the United States in 2013, and it is believed to be the largest jury verdict under the Sherman Act ever. Mr. Cormier's success litigating and trying cases spans beyond antitrust. For example, in 2022 alone, he secured a \$41 million jury verdict in Colorado state court as co-lead trial

counsel in a business dispute involving a large foreign oil and gas concession. That same year, in his role as court-appointed co-lead counsel in *In re Plaid Inc. Privacy Litigation*, No. 4:20cv3056 (N.D. Cal.), he secured a class-wide settlement of \$58 million and valuable injunctive relief.

Like Mr. Burns, Mr. Cormier has been named to the Lawdragon 500 Leading Plaintiff Financial Lawyers guide and the Lawdragon 500 Leading Plaintiff Consumer Lawyers guide for the past three years, honored as one of the world's top antitrust lawyers in the Global Competition Review's Who's Who Legal: Competition for the past three years, selected to the Best Lawyers in America for the past four years, recognized by Benchmark Plaintiff as an Antitrust Litigation Star multiple times, and called a "Rising Star" in the field of Antitrust Litigation by Super Lawyers. More information about Mr. Cormier's relevant experience is included in his resume, attached as Exhibit C.

Amanda Klevorn. Ms. Klevorn has been appointed to several leadership roles and received several awards for her work in the last few years. She was selected as a Lawdragon 500 Leading Plaintiff Consumer Lawyer and Leading Plaintiff Financial Lawyer for the last two years. Ms. Klevorn has been named a Louisiana Super Lawyer Rising Star every year since 2019 and a Best Lawyers in America "One to Watch" every year since 2021. And as noted above, last year she received the 2022 Outstanding Antitrust Litigation Achievement in Private Law Practice for the firm's work in the *EpiPen* antitrust litigation.

In 2020, Ms. Klevorn was appointed to the Plaintiff Steering Committee in *In re TikTok, Inc. Consumer Privacy Litigation MDL* (N.D. Ill.), where she served on behalf of individuals alleging that the creators of the TikTok app violated their rights under Illinois' Biometric

Information Privacy Act and other federal and state consumer privacy and protection laws.² She also currently serves on the Plaintiffs' Steering Committee in *In re Gilead Tenofovir Cases JCCP* (Cal.), a consolidated state court mass tort litigation brought on behalf of tens of thousands of plaintiffs alleging defendant Gilead Sciences, Inc.'s tenofovir-based drugs caused them to develop kidney and/or bone disease. More information about Ms. Klevorn's relevant experience is included in her resume, attached as Exhibit D.

Spencer Cox. Mr. Cox represented a certified nationwide class of plaintiffs in a federal multi-district litigation in an antitrust and racketeering class action over the rising prices of EpiPen injectable devices. *In re EpiPen Marketing, Sales Practices and Antitrust Litigation*, No. 2:17-md-02785-DDC-TJJ (D. Kan.). Again, as noted above, for his work in that case Mr. Cox received recognition from the American Antitrust Institute for "Outstanding Antitrust Achievement by a Young Lawyer" and "Outstanding Antitrust Litigation Achievement in Private Law Practice" this year. Texas Super Lawyers has recognized him as a "Rising Star" every year since 2019, and Best Lawyers named him "One to Watch" in 2023.

Before dedicating himself to law, Spencer served as a Naval Aviator and flight instructor in the F/A-18 Super Hornet, logging more than 400 arrested carrier landings. As a fighter pilot, Mr. Cox learned the importance of attention to detail and leadership, demonstrating a knack for performing best when the stakes are highest. More information about Mr. Cox's relevant experience is included in his resume, attached as Exhibit E.

² Before the *TikTok* litigation was consolidated in the U.S. District Court for the Northern District of Illinois, Ms. Klevorn was also appointed by the Hon. Lucy Koh to the Plaintiffs' Executive Committee in the consolidated *TikTok* proceedings in the U.S. District Court for the Northern District of California.

b. Charles Gabriel and Chalmers & Adams PLLC

Charles D. “Chuck” Gabriel has exceptional investigative skills after his 28-year career as an FBI Special Agent, serving as both a journeyman investigator and Principle Legal Advisor. Mr. Gabriel has successfully represented clients in class actions, fraud against the government, whistleblower claims, and civil RICO matters. In 2014, Mr. Gabriel’s clients won the largest class action settlement judgment in Georgia (*In re Cobb EMC Class Action*, Cobb Superior Court, No. 10:100353-48). In 2018, Mr. Gabriel served on the Court Appointed Executive Committee in *Bhatia, et al. v 3M Company*, USDC, Case Number: 16-cv-1304 DWF-DTS (D. Minn.) where his dentist and dental practice clients achieved a \$32.5 million class action settlement and judgment.

Chalmers & Adams PLLC is a litigation and political law boutique firm of highly qualified litigators of various backgrounds who have brought extensive experience in complex, high-stakes civil and criminal litigation together at the trial and appellate levels. Members’ representative matters include pharmaceuticals, biologics, and automobile products liability cases, claims under the False Claims Act, Sarbanes-Oxley, and other whistleblower statutes, general civil frauds and Civil RICO claims. Members also represent corporate clients in internal investigations regarding leaks, misappropriations, commercial espionage and other internal corporate improprieties as well as provide white collar criminal defense in related matters.

III. Conclusion

Plaintiffs H & R Farms II and Teche Farm Supplies respectfully move this Court to appoint Warren T. Burns of Burns Charest as Interim Class Counsel for the putative class

pursuant to Rule 23(g) and Charles D. Gabriel of Chalmers & Adams PLLC as Liaison Counsel.

Dated: April 20, 2023

Respectfully Submitted,

/s/ Warren T. Burns

Warren T. Burns *(to be admitted pro hac vice)*

Kyle Oxford *(to be admitted pro hac vice)*

Quinn M. Burns *(to be admitted pro hac vice)*

BURNS CHAREST LLP

900 Jackson Street, Suite 500

Dallas, Texas 75202

Telephone: (469) 904-5002

wburns@burnscharest.com

koxford@burnscharest.com

qburns@burnscharest.com

Korey Nelson *(to be admitted pro hac vice)*

Amanda Klevorn *(to be admitted pro hac vice)*

Hannah Quicksell *(to be admitted pro hac vice)*

BURNS CHAREST LLP

365 Canal St. #1170

New Orleans, LA 70130

Telephone: (504)-779-2845

knelson@burnscharest.com

aklevorn@burnscharest.com

hquicksell@burnscharest.com

Christopher Cormier *(to be admitted pro hac vice)*

Spencer Cox *(to be admitted pro hac vice)*

BURNS CHAREST LLP

Telephone: (202) 577-3977

4725 Wisconsin Avenue NW, Suite 200

Washington, DC 20016

ccormier@burnscharest.com

scox@burnscharest.com

Charles D. Gabriel *(admission pending)*

NC Bar No. 54684

CHALMERS & ADAMS PLLC

North Fulton Satellite Office

5755 North Point Parkway, Suite 96

Alpharetta, GA 30097

Direct: (678) 735-5903

Facsimile: (678) 735-5905

cdgabriel@cpblawgroup.com

Kevin James Cline
NC Bar #57854
CHALMERS & ADAMS PLLC
204 N. Person St.
Raleigh, NC 27601
Telephone: (828) 234-4129
kcline@chalmersadams.com

*Counsel for Plaintiffs H & R Farms II and Teche Farm
Supplies*

CERTIFICATE OF SERVICE

On April 21, 2023 I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Middle District of North Carolina, using the Court's CM/ECF system. I hereby certify that I have provided copies to all counsel of record electronically or by another manner authorized by Fed. R. Civ. P. 5(b)(2).

Dated: April 21, 2023

/s/ Kevin James Cline

Kevin James Cline
NC Bar #57854
CHALMERS & ADAMS PLLC
204 N. Person St.
Raleigh, NC 27601
Telephone: (828) 234-4129
kcline@chalmersadams.com